

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

08/07/2002

CLERK OF THE COURT  
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

CV 2002-090639

FILED: \_\_\_\_\_

SUPERSTITION SPRINGS HOMEOWNERS  
ASSOCIA

JEFFREY B CORBEN

v.

JOHN C BOOTHE

JOHN C BOOTHE  
2256 S SARANAC  
MESA AZ 85208-0000

PHX JUSTICE CT-E2  
REMAND DESK-SE

MINUTE ENTRY

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This Court has considered and reviewed the record of the proceedings from the East Phoenix #2 Justice Court, and the memoranda submitted by the parties. This case has been under advisement since the time Appellant's reply brief was due on June 28, 2002. No reply brief was submitted by Appellant in this case.

The only issue presented in this appeal is whether the trial judge erred in granting Appellee, Superstition Springs Homeowners Association's Motion for Summary Judgment on January 9, 2002. Appellant, John C Boothe, contends that he was denied his right to a fair trial because the trial court granted

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Appellee's Motion for Summary Judgment prior to the time scheduled for trial. It should be noted that Appellant failed to file any response or objection to the Motion for Summary Judgment, and failed to respond when Appellee filed a motion requesting that the trial court rule on its Motion for Summary Judgment.

The judgment granted by the trial court included regular homeowners assessments due from Appellant, fines and costs of collection. Curiously, Appellant does not contend on appeal that the assessments and fines were not owed by him, but, rather, that a statute of limitations had run as to one fine, and that Appellant should be permitted to negotiate a reasonable settlement. Appellant does not deny that he owes the money to Appellee, as Appellee contended in its Motion for Summary Judgment.

The law in Arizona is well settled that Summary Judgment is appropriate where there are no genuine issues of material fact, and one party is entitled to judgment, as a matter of law.<sup>1</sup> Motions for Summary Judgment pursuant to Rule 56, Arizona Rules of Civil Procedure, are not designed to resolve factual issues. Where there is the slightest dispute as to the facts, a Motion for Summary Judgment should be denied by the trial judge.<sup>2</sup>

In this case Appellant failed to contests Appellee's Motion for Summary Judgment, or reply to it in any manner. Appellant does not now dispute the facts within that motion. It appears that, as a matter of law, Appellee was entitled to judgment against Appellant as there were no material issues of fact to be decided in a trial by the trial court. Therefore, the trial court did not err in granting Appellee's Motion for Summary Judgment.

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<sup>1</sup> Fire Insurance Exchange v. Beray, 143 Ariz. 429, 694 P.2d 259, approved as modified, 143 Ariz. 361, 694 P.2d 191 (App. 1983).

<sup>2</sup> See City of Phoenix v. Space Data Corporation, 111 Ariz. 528, 534 P.2d 428 (1975).

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Appellees have requested attorney's fees and costs on appeal, and good cause appearing in that request,

IT IS ORDERED granting Appellees request.

IT IS FURTHER ORDERED that counsel for Appellee shall submit an Application and Affidavit for Attorney's Fees and Costs incurred in litigating this appeal to this court, with a form of order for attorney's fees, no later than September 13, 2002.

IT IS FURTHER ORDERED affirming the judgment of the East Phoenix #2 Justice Court in this case.

IT IS FURTHER ORDERED remanding this matter back to the East Phoenix #2 Justice Court for all further and future proceedings in this case, with the exception of attorney's fees and costs on appeal.